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6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 AUTOMOTIVE INDUSTRIES PENSION
12 TRUST FUND, JAMES H. BENO, Trustee,
13 BILL BRUNELLI, Trustee, STEPHEN J.
14 MACK, Trustee, CHRIS CHRISTOPHERSEN,
15 Trustee, DON CROSATTO, Trustee, MARK
16 HOLLIBUSH, Trustee, JON ROSELLE,
17 Trustee, DOUGLAS CORNFORD, Trustee,
18 and JAMES V. CANTERBURY, Trustee,

15 Plaintiffs,

16 v.

17 BROADWAY MOTORS, a California
18 corporation,

18 Defendant.

Case No.: CV 11-6705 EDL

**STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT**

20 IT IS STIPULATED by and between the parties hereto that Judgment may be entered in
21 the within action in favor of Plaintiffs AUTOMOTIVE INDUSTRIES PENSION TRUST FUND,
22 et al., (“Plaintiffs”) and against Defendant BROADWAY MOTORS, a California corporation, or
23 successor entities, (“Broadway Motors”), as follows:

24 1. Defendant entered into a series of valid collective bargaining agreements with the
25 Machinists Automotive Trades District Lodge No. 190 of Northern California (“Union”) for and
26 on behalf of Automotive Machinists Lodge No. 1173, I. A. M. & A. W. (hereinafter “Bargaining
27 Agreement”). Defendant ceased paying contributions and had a complete withdrawal from
28 Plaintiff Automotive Industries Pension Trust Fund in March 2008.

- 1 - STIPULATION FOR ENTRY OF JUDGMENT
AND JUDGMENT; CASE NO. C 11-6705 EDL

2. Pursuant to the effective Bargaining Agreement, the Trust Agreements of Plaintiff Fund, as amended, and ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (29 U.S.C §§ 1001-1461 (1982)), Broadway Motors is indebted to Plaintiffs for unpaid withdrawal liability, liquidated damages in the amount of 20%, interest at the rate of 7% per annum, attorneys' fees and costs.

3. Defendant Broadway Motors through its Owner/Vice-President Greg Tachiera, acknowledges receipt of the following documents in this action:

- a) Complaint
- b) Summons
- c) Order Setting Initial Case Management Conference and ADR Deadlines
- d) Standing Order for U.S. Magistrate Judge Elizabeth D. Laporte and Standing Order Re Case Management Conference;
- e) Standing Order for All Judges of the Northern District of California; Contents of Joint Case Management Conference Statement
- f) ECF Registration Information
- g) Welcome to the U.S. District Court
- h) Notice of Assignment of Case to a U.S. Magistrate Judge for Trial; Forms: Consent to Proceed Before a U.S. Magistrate Judge; Declination to Proceed Before a U.S. Magistrate Judge and Request for Reassignment to a U.S. District Judge
- i) Instructions for Completion of ADR Forms Regarding Selection of an ADR Process (ADR Local Rule 3-5); Stipulation and Proposed Order Selecting ADR Process; Notice of Need for ADR Phone Conference; ADR Certification by Parties and Counsel
- j) ADR – Dispute Resolution Handbook
- k) Pamphlet: Consenting to a Magistrate Judge's Jurisdiction in the Northern District of California

4. In accordance with the provisions of Title 28, U.S.C. Section 636(c), Plaintiffs and Defendant hereby voluntarily consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

5. Pursuant to this Stipulated Judgment, Defendant agrees as follows:

a. The Court will enter Judgment against Defendant in the total amount of \$2,239,117.55 (two million two hundred thirty-nine thousand one hundred seventeen dollars and fifty-five cents) representing unpaid withdrawal liability in the amount of \$1,532,921.00, interest at the rate of 7% per annum calculated through December 31, 2011, liquidated damages equal to

the greater of the accrued interest on the unpaid withdrawal liability or 20% of the amount of the unpaid withdrawal liability and reasonable attorneys' fees and costs, as follows:

Assessed Withdrawal Liability: \$ 1,532,921.00

7% Interest calculated through 12/31/11: \$ 340,134.86

Liquidated Damages equal to the greater of accrued interest or 20% of the unpaid withdrawal liability: \$ 340,134.86

Attorneys' Fees and Costs: \$ 25,926.83

Total Judgment Amount: \$ **2,239,117.55**

b. Defendant waives any and all defenses to the claims of Plaintiffs for withdrawal liability, liquidated damages, interest and reasonable attorneys' fees and costs.

c. A writ of execution may be obtained against Defendant without further notice, in the amount of the unpaid balance of this Stipulated Judgment, plus any additional amounts under the terms herein, upon declaration of a duly authorized representative of the Plaintiffs setting forth any payment theretofore made by or on behalf of Defendant and the balance due and owing.

d. Defendant waives notice of entry of judgment and expressly waives all rights to stay of execution and appeal.

e. Defendant shall pay all additional costs and attorneys' fees incurred by Plaintiffs in connection with collection of the amounts owed by Defendant to Plaintiffs pursuant to this Stipulated Judgment.

6. Pursuant to this Stipulated Judgment, Plaintiffs and Defendant agree as follows:

a. Defendant shall immediately produce to Plaintiffs any and all information and documents in compliance with ERISA §4219(a), 29 U.S.C. §1399(a), determined to be reasonably necessary by Plaintiffs to enable Plaintiffs to comply with the assessment and collection of the withdrawal liability.

7. Pursuant to this Stipulated Judgment, Plaintiffs and Defendant agree as follows:

1 a. All notices to Defendant shall be made to Greg Tachiera, c/o Joshua Cliffe,
2 Littler Mendelson, 650 California Street, 20th Floor, San Francisco, CA 94108-2693.

3 b. In the event of the filing of a bankruptcy petition by Broadway Motors, the
4 parties agree that any payments made by Defendant or on behalf of Broadway Motors as payment
5 on this Judgment, shall be deemed to have been made in the ordinary course of business as
6 provided under 11 U.S.C. §547(c)(2) and shall not be claimed as a preference under 11 U.S.C.
7 §547 or otherwise. Defendant nevertheless represents that no bankruptcy filing is anticipated.

8 8. Should any provision of this Stipulation be declared or determined by any court of
9 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and
10 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
11 illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this
12 Stipulation.

13 9. This Stipulation contains all of the terms agreed by the parties and no other
14 agreements have been made. Any changes to this Stipulation shall be effective only if made in
15 writing and signed by all parties hereto.

16 10. This Stipulation may be executed in any number of counterparts and by facsimile,
17 each of which shall be deemed an original and all of which shall constitute the same instrument.

18 11. The parties further agree that the Court shall retain jurisdiction of this matter until
19 this Judgment is satisfied.

20 Dated: January 17, 2012

SALTZMAN & JOHNSON LAW CORPORATION

21
22 By: 

Kimberly A. Hancock

Attorneys for Plaintiffs

Automotive Industries Pension Trust Funds, et al.

23
24
25 Dated: January 12, 2012

BROADWAY MOTORS

26
27 By: 

Greg Tachiera, Owner and Vice-President

1 IT IS SO ORDERED AND ADJUDGED.

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3 Dated: January 23, 2012

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5 HON. ELIZABETH D. LAPORTE
6 UNITED STATES MAGISTRATE JUDGE
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